



Economic Impact Analysis Virginia Department of Planning and Budget

6 VAC 35-30 – Regulations for Approving Juvenile Residential Facilities and for State Reimbursement of Local Juvenile Residential Facility Costs

Department of Juvenile Justice

June 26, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The General Assembly allows the State Board of Juvenile Justice in §66-10 of the Code of Virginia to promulgate regulations as may be necessary to carry out provisions of Title 66 (Youth Services) and other laws of the Commonwealth administered by the director of the Department of Juvenile Justice. The General Assembly specifically mandates in §16.1-309.5 of the Code of Virginia that the State Board of Juvenile Justice promulgate regulations that include criteria to serve as guidelines in evaluating requests for reimbursement of construction, enlargement, renovation, purchase, or rental costs for detention homes and other juvenile residential facilities incurred by a county, city, or any combination of the two.

The regulation proposes the following changes: (1) All facilities constructed, enlarged, or renovated with the intention of housing juveniles are required to have their preliminary design and construction documents reviewed and approved by the Department of Juvenile Justice (DJJ).

Moreover, the city, county, or private entity that is constructing, enlarging, or renovating the facility is required to follow certain procedures during the construction process and upon completion of construction. Under existing policy, only entities seeking state reimbursement of construction costs have to fulfill these requirements. (2) All facilities being constructed, enlarged, or renovated to house juveniles are required to meet certain minimum standards for design and construction. The standards are contained in a guidance document developed and maintained by DJJ. The proposed regulation specifies the minimum content requirements for the guidance document. The existing regulation does not include references to specific construction and design standards that have to be met by juvenile residential facilities. (3) Cities, counties, or private entities seeking state reimbursement will be required to submit a needs assessment and a completed planning study to the State Board of Juvenile Justice and to the governor or the governor's designee for approval prior to starting construction. Under existing policy, governor's approval was not required at the needs assessment or at the planning stage. (4) The process for submitting reimbursement requests has been modified to allow for more flexibility in setting due dates for each stage of the reimbursement process. (5) The maximum area allowance per bed is changed from 900 square feet to 600 square feet. (6) Costs of furnishings and equipment that are included in the total cost of the project for which reimbursement is sought are to be calculated using the funding formula developed by the State Board of Juvenile Justice. Under existing policy, an itemized list of furnishings and equipment is required to be included in the total project costs. (7) The proposed regulation allows DJJ's Office of Capital Outlay Management to levy a fee for the review and approval of juvenile residential facility construction projects.

The proposed regulation requires that DJJ publish guidelines for the submittal, review, and evaluation of projects and for the resolution of any differences between the city, county, or private entity undertaking the construction and DJJ. The proposed regulation sets minimum content requirements for the guidance document. The regulation also requires DJJ to publish guidelines regarding the submission of a project proposal to the State Board of Juvenile Justice (including any issues that could not be resolved between the city, county, or private entity undertaking the construction and DJJ).

The proposed regulation also updates terminology and references, reflects changes in statute and agency organization, adds clarifying language, and removes unnecessary language from the existing regulation.

Estimated Economic Impact

(1) The proposed regulation requires that a city, county, or private entity that is constructing, enlarging, or renovating a facility that is intended to house juveniles submit preliminary design documents to DJJ for approval. The city, county, or private entity is also required to submit construction documents to be reviewed and approved by DJJ and the fire official of the local authority having jurisdiction. Moreover, the entity undertaking the construction, enlargement, or renovation is required to meet certain notification, reporting, and inspection requirements during the construction process and upon completion of construction. Under existing policy, only localities seeking state reimbursement of project costs have to fulfill these requirements.

The proposed change is likely to impose additional costs on juvenile detention facility construction projects not seeking state reimbursement of project costs. These projects will now be required to comply with requirements of this regulation that were previously applicable only to projects seeking reimbursement. The requirements include having design and construction documents reviewed and approved by DJJ's Office of Capital Outlay Management, reporting and correcting any significant deviations from the approved design and construction plans, submitting monthly progress reports, allowing DJJ representatives access to the construction site for inspection purposes, and conducting a final inspection and obtaining final approval from all the relevant regulatory agencies upon completion of the construction project. However, the proposed change is also likely to produce economic benefits by ensuring at each stage that the facility is being constructed in compliance with DJJ and Code of Virginia requirements. As these facilities would have to be certified upon completion by DJJ before being allowed to house juveniles, oversight at the various stages of construction is likely to ensure that the facility is built according to specifications and prevent costly disagreements once the facility has been built between DJJ and the entity undertaking the construction. DJJ oversight is likely to reduce confusion arising from issues such as planned variations from DJJ specifications, and

misunderstandings and/or misapplications of these specifications by the entity undertaking the construction project.

The net economic impact will depend on whether the economic costs imposed by the regulation are outweighed by the economic benefits produced by it. There are no studies or data available at this time that would allow us to determine the precise economic impact of the proposed change. However, given the scale of these types of construction projects and the costs of making a mistake, it is not likely that the potential benefits will be outweighed by costs associated with going through the review and approval process. According to DJJ, there are 24 juvenile detention facilities and approximately 50 halfway houses and group homes currently in operation in Virginia. All 24 existing detention facilities have been constructed with state reimbursement of some part of their project costs. Moreover, only one detention facility has undertaken an expansion project in recent years without seeking state reimbursement and that facility chose to have DJJ review and approve their construction plans even though it was not required to do so.

(2) The proposed regulation requires all facilities being constructed, enlarged, or renovated to house juveniles, regardless of whether they seek state reimbursement of project costs or not, to meet certain minimum standards for design and construction. The standards are contained in a guidance document developed and maintained by DJJ and entitled Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities. While DJJ currently reviews and approves all juvenile residential facility design and construction plans for facilities claiming state reimbursement, the specific construction standards and requirements used to evaluate these plans are not publicly available. The proposed change requires DJJ to make these standards and requirements publicly available in a guidance document.

The proposed change is likely to produce some economic benefits. By publishing the design and construction requirements used to evaluate juvenile residential facility construction projects, the proposed regulation is likely to standardize the review and approval process and ensure that the standards are applied consistently. Moreover, by making the standards by which design and construction plans are to be reviewed and approved available to the entities undertaking the construction, the proposed change will streamline and make the process of constructing facilities that meet DJJ requirements more efficient. However, if the guidance

document includes additional requirements not currently used in the evaluation of juvenile residential facility construction projects, it is likely to impose additional costs on facilities constructed after the effective date of this regulation. The net economic impact of the proposed change will depend on whether the guidance document includes additional construction standards and requirements not currently used in the evaluation of projects and whether the costs imposed by the additional requirements outweigh the economic benefits of the proposed change. The guidance document largely deals with construction standards as they relate to life safety, security, and suicide prevention. According to DJJ, the guidance document simply formalizes industry standards and practices currently used by DJJ in evaluating juvenile residential facility construction projects. Moreover, DJJ believes that, with the exception of one facility, all other juvenile detention facilities currently operating in Virginia meet the construction standards specified in the guidance document. Thus, the agency does not believe that the construction standards specified in the guidance document constitute a significant departure from existing criteria used to evaluate such projects and thus, are not likely to impose significant additional costs.

(3) The proposed regulation requires cities, counties, or private entities seeking state reimbursement to submit a needs assessment and a completed planning study to the State Board of Juvenile Justice and to the governor (or the governor's designee) for approval prior to starting construction. Under existing policy, the governor's approval was not required at the needs assessment or the planning stage and decisions regarding the approval of projects and the amount of state reimbursement was made by DJJ. The proposed change is required by §16.1-309.5 the Code of Virginia. The law requires that no reimbursement for costs of construction can be made unless the plans and specifications, including the need for additional personnel, have been submitted and approved by the Governor.

The proposed change is likely to impose additional costs. In addition to DJJ approval, the needs assessment study and planning study for construction projects seeking state reimbursement have to be approved by the governor or his designee prior to construction. However, the additional level of scrutiny required by the proposed regulation could produce some economic benefits. The additional review requirements will lead to greater scrutiny of such projects and a better chance of ensuring that facilities are built on the basis of need and that the project costs are reasonable. The net economic impact will depend on whether the

additional costs imposed by the proposed change are greater than or less than its potential benefits. There are no studies or data available at this time that would allow us to quantify the costs and benefits associated with the proposed change.

(4) The proposed regulation modifies the process for submitting reimbursement requests to allow for more flexibility in setting due dates for each stage of the reimbursement process. Rather than requiring the various stages of the reimbursement process to be completed by specific dates, the proposed regulation allows DJJ to determine a schedule for these submissions based on the budget review process. Existing policy requires that the entity undertaking construction submit a complete reimbursement request by April 1 of each year and that the Board of Juvenile Justice approve reimbursement requests by June 1 of each year.

The proposed change is likely to have a small net positive economic impact. By allowing flexibility in the submission dates, the proposed change will allow DJJ to incorporate any changes in the budget review process that might require a change in submission deadlines. The increased flexibility is provided at little or no additional cost. Interested parties will still be able to get information regarding the submission deadlines. The proposed regulation requires DJJ to publish an annual schedule detailing the submissions deadlines for entities seeking reimbursement and the dates by which the Board of Juvenile Justice must approve reimbursement requests.

(5) The proposed regulation reduces the maximum area allowance per bed for juvenile residential facilities from 900 square feet to 600 square feet. The maximum area allowance per bed is used to calculate the size of the facility to be constructed and project costs when state reimbursement of part of the costs is sought. Thus, size of juvenile residential facilities and hence the costs of construction for which reimbursement is sought will now be based on providing a maximum area of 600 square feet per bed rather than the existing maximum of 900 square feet.

The proposed change could produce some economic benefits. By reducing the maximum area allowance per bed, it could reduce the size of some juvenile residential facilities and hence the construction costs associated with building these facilities. However, the proposed change could also impose additional costs. By reducing the maximum area allowance per bed, it could result in overcrowding and impose additional costs in terms of an increased risk to public safety,

to the safety of correctional personnel, and to the health and safety juveniles housed in those facilities. DJJ does not believe that reducing the maximum area allowance per bed will increase the risk to public safety, to the safety of correctional personnel, or to the health of safety of the juvenile. According to DJJ, a maximum area allowance of 600 square feet is consistent with standards recommended by the American Correctional Association (an organization consisting of more than 20,000 correctional employees). Moreover, there is no data (in terms of the number of escapes, the number of correctional officers injured or killed, the number of incidents of juveniles injuring or killing themselves while incarcerated etc.) to indicate that facilities providing an area bed allowance less than 900 square feet pose an increased risk to public safety, and to the health and safety of individuals working and living at these facilities. DJJ is not aware of any facilities currently operating with a 900 square feet area allowance per bed and believes the 900 square feet requirements to be an error in the existing regulation.

(6) The proposed regulation requires the costs of furnishings and equipment included in the total cost of the project for which state reimbursement is sought to be calculated using a funding formula developed by the Board of Juvenile Justice. Currently, the funding formula provides for reimbursement of up to one-half of the cost of furnishings and equipment (not to exceed a maximum of \$3,000 per bed). Under the existing regulation, an itemized list of furnishings and equipment built into the facility at the time of construction is required to be included in the total project costs submitted for reimbursement. DJJ usually reimbursed up to one-half the total cost of furnishings and equipment.

The proposed change is not likely to have a significant economic impact. To the extent that it clarifies the process by which the exact amount or proportion furnishings and equipment costs are to be reimbursed, it will produce some economic benefit. It is not likely to impose any significant additional cost as it does not change DJJ's current practice in determining the amount to be reimbursed.

(7) The proposed regulation allows DJJ's Office of Capital Outlay Management to levy a fee for the review and approval of juvenile facility construction projects. The fees are to cover some or all of the administrative costs incurred in the review and approval process. Currently, only projects seeking state reimbursement are required to be reviewed and approved and are done so at the expense of DJJ and hence the taxpayer.

All residential juvenile facilities have to be certified by DJJ before they can be used to house juveniles. If a facility does not meet DJJ requirements, certification can be denied. By having DJJ review and approve construction and design plans, the cities, counties, and/or private entities undertaking construction will be more certain of meeting construction and design specifications and of eventually being certified. The amount of the fee charged will determine whether the benefits of having DJJ review and approve construction and design plans is greater than or less than the fees charged to do so. However, the scale and money involved in these types of construction projects tend to be very large and mistakes at the time of construction could prove to be very expensive and could lead to certification being denied. It is unlikely that any fees that DJJ charges to cover the administrative costs of the review and approval process are going to be larger than the costs associated with correcting mistakes made during construction or having certification denied.

Businesses and Entities Affected

The proposed regulation will affect all juvenile residential facilities constructed, enlarged, or renovated in Virginia. This includes detention facilities, halfway houses, and group homes used to house juveniles. Facilities, regardless of whether they seek state reimbursement of construction costs or not, will be required to have their design and construction plans reviewed and approved by DJJ. A fee may be charged to cover the administrative costs of the review and approval process. All juvenile residential facilities will also be required to meet detailed design and construction standards specified in a guidance document developed and provided by DJJ. The proposed regulation also makes a number of changes to the procedure for obtaining approval of construction projects and for applying for state reimbursement of construction costs.

As the proposed regulation affects future construction, enlargement, and renovation of juvenile residential facilities, it is not possible to provide an estimate of the number of facilities that will be affected by this regulation. There are 24 juvenile detention facilities currently operating in Virginia and one detention facility expected to become operational in fiscal year 2005. In addition there are approximately 50 halfway houses and group homes operating in Virginia. According to DJJ, since fiscal year 2000, there have been 13 major juvenile residential facility construction projects and several smaller construction projects (such as upgrading or

enhancing security at existing facilities). Given the current budget environment, DJJ does not expect many major construction projects in the near future.

Localities Particularly Affected

The proposed regulation will affect all localities in the Commonwealth.

Projected Impact on Employment

The proposed regulation is not likely to have a significant impact on employment.

Effects on the Use and Value of Private Property

The proposed regulation will affect all entities undertaking the construction of juvenile residential facilities. While some of the changes proposed in the regulation might increase costs for individuals and businesses involved in these projects, others are likely to reduce costs. There is not sufficient data available at this time to determine the net impact of the proposed changes on the asset values of these individuals and businesses. However, the overall impact of the changes is not likely to be very significant.